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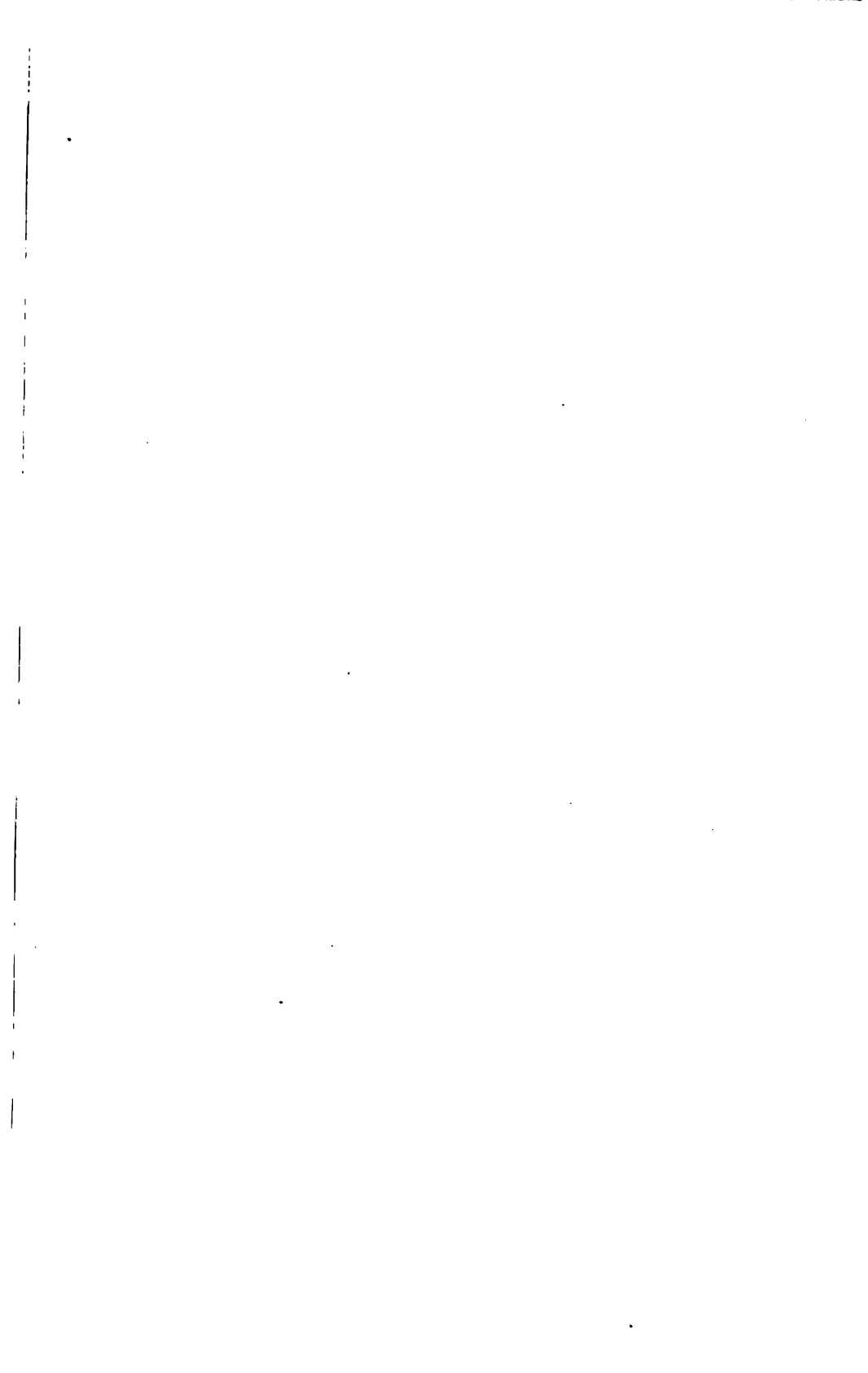


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Book U 61

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ARGUMENTS

BEFORE THE

COMMITTEE ON PATENTS

OF THE

HOUSE OF REPRESENTATIVES

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ON

H. R. 11943,

TO AMEND TITLE 60, CHAPTER 3, OF THE REVISED
STATUTES OF THE UNITED STATES
RELATING TO COPYRIGHTS.

MAY 2, 1906.

COMMITTEE ON PATENTS, HOUSE OF REPRESENTATIVES,
FIFTY-NINTH CONGRESS.

FRANK D. CURRIER, NEW HAMPSHIRE, *Chairman*.

SOLOMON R. DRESSER, PENNSYLVANIA.

JOSEPH M. DIXON, MONTANA.

EDWARD H. HINSHAW, NEBRASKA.

ROBERT W. BONYNGE, COLORADO.

WILLIAM W. CAMPBELL, OHIO.

ANDREW J. BARCHFELD, PENNSYLVANIA.

JOHN C. CHANEY, INDIANA.

CHARLES MCGAVIN, ILLINOIS.

WILLIAM SULZER, NEW YORK.

GEORGE S. LEGARE, SOUTH CAROLINA.

EDWIN Y. WEBB, NORTH CAROLINA.

ROBERT G. SOUTHWALL, VIRGINIA.

JOHN GILL, JR., MARYLAND.

EDWARD A. BARNEY, *Clerk*.

WASHINGTON:

GOVERNMENT PRINTING OFFICE.

1906.

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ARGUMENT ON H. R. 11943, TO AMEND TITLE 60, CHAPTER 3, OF REVISED STATUTES OF THE UNITED STATES, RELATING TO COPYRIGHTS.

COMMITTEE ON PATENTS,
House of Representatives, May 2, 1906.

The committee met at 11 o'clock a. m.

Present: Messrs. Currier (chairman), Dresser, Bonyngé, Chaney, Sulzer, and Gill.

The CHAIRMAN. The committee will now hear the gentlemen who appear for and against the bill H. R. 11943.

Mr. CHANEY. That is the bill relating to music?

The CHAIRMAN. Yes. Give me the number of the section you seek to amend.

Mr. SULZER. Section 4966.

Mr. FROMME. Section 4966.

The CHAIRMAN. The bill seeks to amend section 4966 of the Revised Statutes, which in the original text is as follows:

Any person publicly performing or representing any dramatic composition for which a copyright has been obtained, without the consent of the proprietor thereof, or his heirs or assigns, shall be liable for damages therefor, such damages in all cases to be assessed at such sum, not less than one hundred dollars for the first and fifty dollars for every subsequent performance, as to the court shall appear to be just.

On January 6, 1897, section 4966 was amended to read as follows:

SEC. 4966. Any person publicly performing or representing any dramatic or musical composition for which a copyright has been obtained, without the consent of the proprietor of said dramatic or musical composition, or his heirs or assigns, shall be liable for damages therefor, such damages in all cases to be assessed at such sum, not less than one hundred dollars for the first and fifty dollars for every subsequent performance, as to the court shall appear to be just. If the unlawful performance and representation be willful and for profit, such person or persons shall be guilty of a misdemeanor, and upon conviction be imprisoned for a period not exceeding one year. Any injunction that may be granted upon hearing after notice to the defendant by any circuit court in the United States, or by a judge thereof, restraining and enjoining the performance or representation of any such dramatic or musical composition may be served on the parties against whom such injunction may be granted anywhere in the United States, and shall be operative and may be enforced by proceedings to punish for contempt or otherwise by any other circuit judge or judge in the United States; but the defendants in said action, or any or either of them, may make a motion in any other circuit in which he or they may be engaged in performing or representing said dramatic or musical composition to dissolve or set aside the said injunction upon such reasonable notice to the plaintiff as the circuit court or the judge before whom said motion shall be made shall deem proper; service of said motion to be made on the plaintiff in person or on his attorneys in the action. The circuit courts or judges thereof shall have jurisdiction to enforce said injunction and to hear and determine a motion to dissolve the same, as herein provided, as fully as if the action were pending or brought in the circuit in which said motion is made.

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provision for that in the new copyright draft that is being framed, the publisher or author or owner of the copyright, whoever he is, should have the right to make such loan, but that it should not be done through what we term the scalper.

The CHAIRMAN. Do you think the publishers would greatly object if the lending of these books was confined to a religious or school society, and the loan was made to a similar society for charitable performances?

Mr. FURNESS. We have in Massachusetts, in Worcester, a musical society that gives an entertainment each spring, called the May Festival.

Mr. SEVERN. Do they charge an admission?

Mr. FURNESS. They charge an admission, and they get the best talent they can procure. They have a few hundred books, and many times they loan them out to other societies for similar entertainments, to societies that are not so poor but what they could afford to buy them. That is one of the great evils that is interfering with the business of the music publishers.

Mr. GILL. Do the singers and musicians give their services free?

Mr. FURNESS. No; they do not. They are well paid. They have Caruso and Sembrich and others of that class.

Mr. SERVEN. There may be a single song or instrumental piece which, of course, can be produced on three or four pages and sold separately; but anything other than something like that in the line of a musical composition is simply valuable to the producer of it because of the fact that it is going to be performed, and it is written especially for that purpose, just as the dramatic compositions are written solely for the purpose of performance, and not for the purpose of their literary merit or as a matter of reading. And for that reason the performance of the extended musical composition is exactly the same as the performance of the dramatic composition.

And, to follow the comparison with the patent, in the same way that the manufacture of the patent is to the right that is granted under the patent so is this performance to the right that is granted under the copyright, and the proceeds of the production are directly proportional to the performance of the production. There is, to be sure, a limited amount of private sales to persons who, for instance, find some one little theme in a composition and like to have it in their homes and occasionally sing it in their homes and possibly somewhere else, but I should think it would be safe to say that not less than 90 per cent of all the sales of oratorios or operettas or cantatas—I am speaking both of religious and secular musical works—are either directly or indirectly solely for the purpose of public performance and connected with public performance.

The CHAIRMAN. But one of these societies that bought the books for the purpose of giving a performance would only loan it to some society near by.

Mr. SERVEN. Unless, as they sometimes do, they would send from Worcester to California for something. It is easy to do those things, and they do it, or have done it.

The CHAIRMAN. There might be persons in a society in California that had friends belonging to a similar society in Massachusetts, and in such cases there might be some correspondence and exchange, but that would rarely happen, I should say.

The clerk of the court, or judge granting the injunction, shall, when required so to do by the court hearing the application to dissolve or enforce said injunction, transmit without delay to said court a certified copy of all the papers on which the said injunction was granted that are on file in his office.

That, I understand, is as the law now stands.

Now, gentlemen, who desires to be heard in favor of the Bennet bill?

Mr. SULZER. I suggest that we hear Mr. Fromme, of New York.

The CHAIRMAN. How much time do you desire, Mr. Fromme?

Mr. FROMME. I do not think it will take very long. I will take but a few minutes.

STATEMENT OF MR. HERMAN FROMME, OF NEW YORK.

Mr. FROMME. Mr. Chairman and gentlemen, this bill, with the corrections—

The CHAIRMAN. Explain to the stenographer the corrections you desire to make in the bill.

Mr. FROMME. The bill as printed reads as follows:

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That section fifty-nine hundred and sixty-six of the Revised Statutes be, and the same is hereby, amended so as to add at end of said section the following:

"Nothing in this act shall be so construed as to prevent the renting of religious or secular works, such as oratorios, cantatas, masses, or octavo choruses from any person, musical library, or society, nor to prevent any person or society from obtaining copies of any such work from any other person, society, or musical library owning the same."

We desire to make the following corrections in the bill as printed: In line 3, after the word "section," strike out the word "fifty-nine," and insert "forty-nine." In line 7 strike out the word "renting" and insert "performance," and in line 8, after the word "choruses," insert the words "rented or borrowed."

Mr. BONYNGE. Let me see if I have the corrections as you have given them. In line 3 strike out "fifty-nine" and insert "forty-nine?"

Mr. FROMME. Yes, sir.

Mr. BONYNGE. In line 7 strike out the word "renting" and insert "performance" in lieu thereof?

Mr. FROMME. Yes, sir.

Mr. BONYNGE. And in line 8, after the word "choruses," insert the words "rented or borrowed?"

Mr. FROMME. That is right.

The justice of this amendment, I think, must be apparent from a very short presentation of the matter to you gentlemen. Church choirs, school children, and vocal societies, for their own benefit, and without any profit, once a year give a performance, and for that purpose they buy these copies. I will show you exactly what they are. They cost all the way from 50 cents a copy up to \$2 a copy, I believe.

The CHAIRMAN. You buy these from the owner of the copyright?

Mr. FROMME. We buy these from the owner of the copyright. Assume that we have a membership of 100. Perhaps the membership will be 200, but we will say 100. It may be 50, but for the purpose of illustration I will say 100 members. If an organization with 100 members desires to give a performance, it will have to pay from

\$100 to \$200 to buy these books, oratorios, masses, or whatever they may be.

After they have had that performance, they have no further immediate use for the books. The next year they of course have another one to perform. Many societies, I will say, are too poor, even, to pay the \$100 or \$200 for the books. Therefore they either borrow these books from a society which has bought them and which has paid money for them, or they rent them for a nominal sum—\$10, or \$15, or whatever it may be.

The CHAIRMAN. Let me interrupt you right there. Suppose the same society that has purchased this book desires to give the same performance the next year? Are they allowed to do it?

Mr. FROMME. They can not do it—that is, they would not want to do it; but even taking—

The CHAIRMAN. But suppose they wanted to do it. Are they permitted to give a second performance—the next year?

Mr. BONYNGE. On account of what they have paid before.

Mr. FROMME. I believe that is permitted.

Mr. SERVEN. If they want to do it, they can give as many performances as they desire.

Mr. FROMME. While that is true, I have known of a society that did not exactly give it the following year, but desired to give it a few years afterwards, and they received one of these threatening letters under section 4966. I do not say that all music publishers are unfair or unjust, but as is the case with almost any other society or body of men or organization, you will have a few who will endeavor to make all the profit they can under a section of that kind.

The CHAIRMAN. You can answer very easily the question I have asked. Can they do it?

Mr. FROMME. Yes, sir. But if they have a right to perform it the following year they should have a right to perform it whenever they please, in any year following. I know of a case which was called to my attention by Mr. Innis, I believe, of Chicago. A society, a few years after they had performed one of these works gave it again, or wanted to give it again, and as soon as the publisher heard of it he wrote them a threatening letter calling their attention to that section.

The CHAIRMAN. Have you known of more than one case of that kind?

Mr. FROMME. At the present time I know of but the one case specifically. But I know that a number exist. I could possibly furnish that later.

The CHAIRMAN. Go right on with your argument, and leave that.

Mr. FROMME. They received a threatening letter. The publishers were informed that that was where we had bought these books five or six years before. They said, "How do we know you bought from us? You must come to us and buy them." We said, "We did buy them from your firm." They threatened the society, and I advised its members that they could go ahead notwithstanding. Well, some societies will take your advice, but others under the circumstances will not. If a person is threatened he does not care to do it. The injustice, as the bill now stands, is simply this:

If these different societies can not loan the books, exchange them, or rent them, the ultimate result will be that they will have to dis-

band. We have all been school children, I suppose, and have friends who sing in church choirs, or at least know of some who do, and it is not done for any profit whatever. If it were done for profit it would be another thing. I contend that if you buy this book once, as long as you do not buy one copy and print twenty or a hundred or a thousand of them, you should not be restrained from doing with that book what you please, or with these 100 books. You should be permitted, after you have used them, to loan them to your neighbor, if he be poor, or even to rent them to these poor societies; or to give them, if you have no further use for them, to gentlemen like Mr. Tams, who has a library and has bought ever so many of them.

Mr. SULZER. Just pardon me a moment. As I understand it, you are seeking to amend the statute?

Mr. FROMME. Yes, sir.

Mr. SULZER. In order that when a person buys a book of music, or an oratorio, or a mass, he shall have the right to use that for all future time, or to give it away to anybody else who wants to use it, for all future time.

Mr. FROMME. Yes, sir; or to exchange it in any way he may wish to.

Mr. SULZER. That is the object of the amendment to the law?

Mr. FROMME. Yes, sir.

Mr. SULZER. That is the object of the Bennet bill now?

Mr. FROMME. Yes, sir.

Mr. SULZER. And that is all you seek to accomplish?

Mr. FROMME. That is all we seek to accomplish.

The CHAIRMAN. Do you seek to accomplish quite as much as that? Do you seek to accomplish any more than to be allowed to give or loan it to a society to produce it, without any idea of making profit from the production? You have used the word profit once or twice.

Mr. FROMME. Yes.

Mr. SULZER. These societies in New York City hold these festivals yearly. Their memberships range from 50 to 250 members. They are principally singing societies, composed of Hungarians and Germans. If what Mr. Fromme says is true, that the publishers of oratorios or musical publications insist upon them buying the books from the publishers every year, the injustice of it must be apparent.

Mr. CHANEY. Do the societies you mention conduct their exercises for profit or for charitable purposes?

Mr. SULZER. For charitable purposes—sociable and charitable.

The CHAIRMAN. The language of the bill is much broader.

Mr. BONYNGE. The language of the bill will allow them to use it for profit.

Mr. SULZER. Even assuming that they charge an admission fee to these festivals, that is a charitable matter, because the money goes into the treasury of the society and is used for benevolent and charitable purposes.

Mr. CHANEY. It is not for the profit of individual members?

Mr. SULZER. Oh, no.

The CHAIRMAN. Then the bill should be amended to clearly embrace that idea, should it not?

Mr. BONYNGE. Yes; because under the language of the amendment there might be some organization having a performance for its own profit.

The CHAIRMAN. Have it amended in that respect.

Mr. SULZER. We take this position: Suppose a theatrical manager goes to the publisher of one of these oratorios and buys it. He buys the oratorio. He buys, we will say, 50 or 100 copies. Do you not think he ought to have the right to use them every day, every week, and every month of every year?

Mr. TINDALE. If you will allow me, he has that right. No publisher has ever objected to it.

Mr. SULZER. If no publisher has objected to it, what objection have you to this change in the law, so as to embrace that idea in the statute?

Mr. TINDALE. We object to their renting it to others.

Mr. FROMME. That is very important, the renting of it, because what good will your books be to the poor societies unless they can rent them and thus get back a part of their expense. The original cost is \$100 or \$200. I would like to say right here, that from time immemorial the renting has been permitted, and it has only been recently that the publishers have sent out these threatening circulars to the people.

Mr. SULZER. Have you any of those threatening letters or circulars?

Mr. FROMME. I have one here, I believe.

The CHAIRMAN. Put it in the record.

Mr. FROMME. If I have not one I can send you one. I will let you have one before I am through.

The circular referred to was subsequently produced, and is as follows:

To conductors of musical societies and whom it may concern:

Our attention being called to the fact that public performances of copyrighted works are sometimes given with the use of vocal scores which have been hired for the occasion, and without performing rights first obtained from the publishers by the purchase of copies in the regular manner, we quote below part of section 4966 of the copyright laws of the United States, in force since January, 1890, as follows:

"SEC. 4966. Any person publicly performing or representing any dramatic or musical composition for which a copyright has been obtained, without the consent of the proprietor of said dramatic or musical composition, or his heirs or assigns, shall be liable for damages therefor, such damages in all cases to be assessed at such sum, not less than one hundred dollars for the first and fifty dollars for every subsequent performance, as to the court shall appear to be just. If the unlawful performance and representation be willful and for profit, such person or persons shall be guilty of a misdemeanor, and, upon conviction, be imprisoned for a period not exceeding one year," etc.

We have thought it best to bring the above to the attention of the musical profession at large on account of the different interests involved where rented copies are used or copies obtained at secondhand.

While we are not without our own interests in the matter, yet, as publishers doing business on an extended scale, the actual sale of a few copies more or a few copies less of any particular work is not to us of serious concern. We, however, publish such works under contract with the several authors, under which contracts the authors are entitled to certain royalties on all copies sold. In many cases these royalties represent the only reward which the author obtains for his genius and for his work. It should then require no argument to show that, aside from the publisher's rights and the legal requirements of the case, it is an injustice and a fraud upon the author to use rented copies of his work in giving a performance, thus depriving him of his royalties.

In pursuance of the above the vocal scores of many such copyrighted publications contain a printed notice stating that "Rights of performance can be secured only by the purchase of a copy of this score by or for each and every singer taking part." But even in the absence of such notice the performing rights of a work are secured by the copyright notice. Possession of rented copies or of second-hand copies (whether rented or purchased) does not convey the performing rights, which must be obtained from the publisher.

Our relations with authors and composers are such, therefore, that we feel in duty bound to protect their interests, and to prohibit all performances of these works where the performing rights are not obtained by purchase of copies in the regular manner, and to obtain redress where it is brought to our notice that performances of such works from rented copies have taken place without the publisher's express consent.

It must be freely granted that it would be of no interest for publishers to print nor for authors to write musical works unless the reasonable protection granted by the law is observed.

Since we are addressing the musical profession, many of whom are authors and composers themselves, we feel that it is not asking too much to say that we hope for their cooperation in discountenancing the use of rented or second-hand vocal scores of copyrighted works. To avoid any hardship to purchasers, it is arranged that very liberal concessions in price are made on quantities of such works, whether bought from us direct or through the regular music dealers.

G. SCHIRMER.
NOVELLO, EWER & Co.
ARTHUR P. SCHMIDT.
THE OLIVER DITSON Co.
CHAS. H. DITSON & Co.
J. E. DITSON & Co.
THE BOSTON MUSIC Co.
BOOSEY & Co.
EDWARD SCHUBERTH & Co.

The CHAIRMAN. We are pressed for time, Mr. Fromme.

Mr. FROMME. All right. I will not be very much longer in saying what I want to say.

The CHAIRMAN. The only difficulty is that gentlemen are here from a distance, and they desire to be heard this morning.

Mr. FROMME. Mr. Chairman, we contend that these societies that can not afford to feel in their pockets and pay \$200 for the purchase of these books have some rights, and that they should not be deprived of the right of giving these charitable affairs. The church choirs, the school children, and such societies as Mr. Sulzer has spoken of should not be deprived on account of their poverty of giving such entertainments. For that purpose, I say, they should be permitted to rent these books, either from a library or from some party who has bought them for the purpose of renting to these poor societies. What would be the use, as they try to make the law apply, for you to buy these books and pay \$200—say \$1 apiece, or 50 cents apiece—and they require you to buy as many of these books as you have members—

The CHAIRMAN. Let me ask you a question. Do you object to having this bill so amended as to make it clear that these may be loaned or rented to a society that desires to give a performance not for profit?

Mr. CHANEY. Profit to its individual members.

Mr. FROMME. Absolutely, I do not object. I so told Mr. Serven. We met yesterday, and I was very frank. We had a conference, and I did not believe after our conference that there would be any opposition, but it seems that a couple of gentlemen arrived here who would not consent.

The CHAIRMAN. Can you conclude in five minutes?

Mr. FROMME. Yes, sir. These libraries make no money in the matter. The books are rented once or twice, and then they are put on the shelves. They are only rented a few times. You can imagine how many times they have to rent the books in order to get the cost of them back. They do not get rich from it. They simply keep it up

in connection with their other library business, on which a profit is made. Take books like these [indicating]. There are very large numbers, possibly, bought by the libraries. As I say, the objection has only recently been made.

I say, gentlemen, that I believe, in justice to these poor organizations, church choirs, and schools, they should be permitted to rent them. These books were bought once. They were paid for, and it is simply ridiculous to require, every time a performance is given, that you buy one, I will say, of a different character, assuming that they will permit this one to be produced by the party who purchased it. It is ridiculous that they should have to pay over again. But the cry is all the time, "How do we know you bought this of us? We will not allow you to perform it, even if you want to perform the same thing." Therefore I say it should be made clear, so that there will not be any holdups, and so that they can not say, under this act, "We will lock you up; we will put you in jail, and get damages," etc. I have always endeavored, and have succeeded in a few instances, to have these people, notwithstanding the threats, to give the performance, and they never have attempted to prosecute in one case.

STATEMENT OF MR. ARTHUR W. TAMS, OF NEWARK, N. J.

The CHAIRMAN. You have ten minutes, Mr. Tams.

Mr. TAMS. Gentlemen, I rent music of this description [indicating] to church choirs, public school children, vocal societies——

The CHAIRMAN. Let the stenographer know for whom you appear and what your business is.

Mr. TAMS. My business is that of conducting a music library. I buy these works and rent them to vocal societies, church choirs, and school children throughout the United States. I appear for J. C. Bechtel, of Newark, who also has a library; George Lowell Tracy, of Boston, and the Keokuk School Review.

My experience has been thus: When a new work is published, in many instances, some of the prominent publishers will send me copies with the request that I endeavor to get them started with the vocal societies, to get a performance of them, to popularize them. My library has popularized more cantatas, masses, and octavo choruses than all other sources of popularization combined in this country. The result is this: A society wishes some new work, for example, this [indicating a book]. They will have an appropriation, probably of \$25 or \$50 a year for music. That would hardly pay for the paper that the books are packed in. They send to me. They say, "Will you buy this work and rent it to us?" I do so, without question; without asking the price, whether it is \$2 or 2 cents. It goes to that society. The society will keep it in its possession and use it for six months, in rehearsals. At the end of the six months they give a performance, probably for charity, and in many instances they charge no admission. In some instances they charge just sufficient admission to pay for the rent of the hall, or possibly, if there is \$10 profit, they give it to the church fund or something of that kind.

My experience has been that in nine cases out of ten the book that I buy and that is rented once does not go out again. It is then kept, and it goes on my shelf, and I have to pocket the loss. If it is a success, it will probably take five years before it can go out four times.

It will have to be rented four times for me to get my money back, because they keep them on an average of six months; and when I get the money back which I have paid for the book, it is in rags and will go into the furnace. The book is printed on very bad paper, and it will not stand more than two years' handling, or four rentals.

Mr. BONYNGE. Is that the only business you are engaged in?

Mr. TAMS. Oh, no.

Mr. BONYNGE. If it was, I was wondering how you made anything out of it.

Mr. TAMS. Oh, no; I own a number of copyright operas. I own the performing rights, and I have a great many standard works that are free to the world, like the Messiah—the Messiah, and the Creation. All those works are free to the world. They are one hundred years old. Those are works that are in constant use. They do pay a profit, and the profit on those works and the profit on the performing rights of my operas is what makes up the loss on these things.

The CHAIRMAN. Will you allow me to interrupt you?

Mr. TAMS. Yes, sir.

The CHAIRMAN. Would this satisfy you and the people you represent: If we should amend the law so as to exempt the public schools, church choirs, and vocal societies giving public performances for charitable purposes and not for profit, from the operation of the statute?

Mr. TAMS. Absolutely; yes, sir; that would be perfectly satisfactory.

Mr. GILL. Will you permit me to ask you a question?

Mr. TAMS. Yes, sir.

Mr. GILL. You purchased these books from the owners?

Mr. TAMS. From the publishers.

Mr. GILL. The publishers?

Mr. TAMS. Yes, sir.

Mr. GILL. What rights do you acquire from them in the purchase of these books?

Mr. TAMS. I contend that as long as I can purchase them from the publishers—

Mr. GILL. Permit me first to ask you this: Is there any agreement or understanding between you and the publisher when you purchase this book? What I want to get at is, Do you get the absolute ownership of this book, as you would any other piece of property?

The CHAIRMAN. No; not under this statute.

Mr. GILL. That is what I want to get at.

Mr. SULZER. That is what they want.

Mr. GILL. I want to know what the present law is. I want to know the extent of the protection that the copyright gives to a man in the sale of this property. For instance, I buy a book and it is copyrighted. That book becomes my property and I can sell it.

Mr. FURNISS. A musical composition stands on a different basis from a book.

Mr. GILL. I want to know what the limitation in the purchase is. Can you only purchase it for personal use?

The CHAIRMAN. For personal use.

Mr. FURNISS. Mr. Tams might buy musical compositions from the publishers, and he has a perfect right to sell them to individuals, who can use them as they choose in their home or at any other place

as personal property. The whole point of the thing is the public performance.

Mr. FROMME. You have permitted it from—

Mr. FURNISS (continuing). But when Mr. Tams rents them out for profit, as he does—and he has made large sums of money from it—

Mr. TAMS. I beg to say that I have lost large sums of money. And I want to say that with the exception of one publisher, all of the publishers from whom I have purchased knew perfectly well—and we have talked the matter over—that I bought them for the specific purpose of renting them out to societies; and in many instances—I do not know whether it is right to speak of any particular publisher, probably it is not—they would say, “All we desire is that when you rent this to your clients, if they want the orchestration you get it from us; get it from us and give it to your clients, and we will give you a trade discount on the orchestration.” That has been going on until recently.

Mr. FROMME. For how many years?

Mr. TAMS. For twenty years.

Mr. SULZER. Gentlemen, we are all with you. What the chairman has stated is what you want?

Mr. TAMS. That is all we want.

Mr. SULZER. Then let us hear what is to be said in opposition to it.

Mr. GILL. Let me ask Mr. Tams a question before they start. I would like to ask you, when you purchase a musical publication, do you acquire the right to give a performance under it?

Mr. TAMS. They permit it.

Mr. FROMME. It was sold to him for that purpose.

Mr. GILL. That must be a matter of contract. What I want to know is whether you acquire that right when you purchase it?

Mr. TAMS. I claim that I do, sir.

Mr. FURNISS. We claim that he does not.

Mr. GILL. Well, it is a matter of contract. Do you not make a contract with the people you purchase it from?

Mr. TAMS. These people claim that I make a lot of money. I tell you if I get my money back I will be in luck.

Mr. GILL. Do you acquire the right, in making the contract, to give a performance?

Mr. TAMS. I claim I do.

Mr. FROMME. What do they say when they sell it to you? They permitted you to do it, you say?

Mr. TAMS. They permitted me to do it going on twenty years.

STATEMENT OF MR. J. L. TINDALE, REPRESENTING MR. G. SCHIRMER, MUSIC PUBLISHER.

Mr. TINDALE. First of all, gentlemen, while I do not charge that Mr. Fromme would purposely mislead this committee, one of his remarks might lead to a wrong impression, and I should like to explain that no publisher within my knowledge requires a purchaser of copies of vocal scores to keep on buying fresh copies for any future performance he may wish to give. On the contrary, he is free to give any number of performances from the copies once purchased. What is objected to is the passing on of the copies to others by renting or otherwise without the consent of the author or his assigns.

It is proposed to amend section 4966, title 60, chapter 3, of the Revised Statutes relating to copyrights, by excepting from its provisions the renting of religious or secular works as described. We should like to be on record as opposing this amendment for two reasons:

First. The general reason that Congress is soon to be asked to consider an entirely new revision of the present copyright law. Draft of this revision has already been made through the cooperation of all the parties whose interests are affected, either directly or remotely.

The CHAIRMAN. Except the consumer—the people.

Mr. TINDALE. Yes, sir. If I understand it——

The CHAIRMAN. About 80,000,000 of people have not been represented at the conferences. This committee will try to represent those people.

Mr. TINDALE. This revision is the result of several years of careful study of the subject on the part of not only legal minds, but those who are directly concerned in a business way. While the house I represent does not belong to any of the organizations that have framed this new legislation, we have every confidence in those who have done the work, and we have every reason to believe that this work has been very thoroughly and conscientiously done, and that the result will be a practical and highly satisfactory copyright law, adapted to the peculiar present-day needs of the United States.

Mr. CHANEY. Did your company appear by representation over here?

Mr. TINDALE. No, sir. We have every confidence, however, in the gentlemen who carried on that work.

Mr. FROMME. Who does the gentleman represent?

Mr. TINDALE. G. Schirmer.

The copyright law in this country affects a wide variety of interests, and its different provisions are so interwoven and interlaced that in our opinion it would be unwise at this time to single out any particular section for amendment without considering the matter in its entirety. While it would not necessarily defeat the enactment of the new law, yet it would undoubtedly complicate it and postpone that enactment. All have agreed that this very habit of amending isolated sections at various times has resulted in the present unsatisfactory system of copyright enactments.

If, however, it is intended to urge the enactment of this amendment notwithstanding the new copyright laws which are soon to be considered as a whole, we should protest against the amendment, on the specific grounds that it virtually kills the provision of the section sought to be amended and takes away from the copyright a large part of its value to the publisher and to the author.

We contend that according to the provisions of this section as it now stands the owners of the copyright of a musical work, in common with the holders of the copyright of an opera or a drama, control also the right of performance, and only the owner of a copyright can convey the right of performance to another, and that a party purchasing copies and renting them to others for the purpose of giving performances is conveying something to which he has no title.

Mr. CHANEY. What advantage would it be to a man to buy this if he could not give the performance?

Mr. TINDALE. He can give as many performances as he pleases. He can give 300 performances in a year. It is only when these people rent the books to others and they pass out of their hands that it becomes objectionable. According to the provisions of this law, the owners of the copyright are the only ones who can give the right of performance.

Mr. CHANEY. So you want to cut the men in this business entirely out and make the purchasers buy of the original publisher?

Mr. TINDALE. No, sir; they need not buy of the original publisher. I am glad you raised that point, because a wrong impression has been given by Mr. Fromme. I think I speak for all of the publishers when I say that they do not require that these copies shall be bought from us, but that they be bought from somebody regularly in the music business.

Mr. SULZER. Somebody that buys them from you?

Mr. TINDALE. Yes, sir. Mr. Tams can sell them. We are delighted if he sells thousands, but the right of public performance comes from the publisher.

Mr. SULZER. What good is the publication if you can not perform it?

Mr. TINDALE. The publisher always gives the right of performance.

Mr. SULZER. Then, if the right of performance goes with the publication, what difference does it make to you from whom it is bought? It has to be bought from you originally.

Mr. TINDALE. But when they rent copies they are not bought. You can not rent it and buy it too.

Mr. GILL. Do I understand you to say that in the sale of these publications by the publishers the right of performance goes with the sale of the book?

Mr. SERVEN. To the purchaser.

The CHAIRMAN. To the original purchaser only?

Mr. TINDALE. To the original purchaser; and he can not pass that on to another.

Mr. BONYNGE. But the original purchaser can perform it as often as he pleases?

Mr. TINDALE. We are delighted to have him do so.

Mr. SULZER. As I understand it, the only distinction is this, that the purchaser can not transfer his rights.

Mr. TINDALE. He can not give the right of performance, because he never had the right of performance except as we gave it to him.

Mr. SULZER. In other words, the purchaser can not transfer his rights. That is the statute now, and that is what you want this Government to adhere to?

Mr. TINDALE. We desire the right of performance to be controlled by the owner of the copyright. That is what the statute says now, and we want it to stay that way.

Mr. SULZER. These other people, on the contrary, want the statute so amended that the right of performance shall go with the property?

Mr. TINDALE. Yes, sir; that is it.

The CHAIRMAN. I understand that Mr. Goldfogle, of New York, is present and desires to ask a question.

Mr. GOLDFOGLE. What reasonable objection can there be to the allowance of the right to the purchaser from you to permit some one else to produce the music?

Mr. TINDALE. Because, sir, in the first place, the author has been defrauded of his rights. He has spent his time in composing that music——

Mr. GOLDFOGLE. But you have received the money from the purchaser, and you part with your title to that extent. Why should not the purchaser, having paid you, have the right to permit a society for charitable purposes, for instance, to produce the music?

Mr. TINDALE. He can, if he buys from us. We give the right of performance——

Mr. GOLDFOGLE. You are speaking of your permission. I am speaking of the permission to be given by the purchaser from you. In other words, A purchases from you. You receive the money. Why should not anybody obtaining title from you have the right to give a license, if you please, to a society to produce the music?

Mr. TINDALE. It is like a good many other things. It is like, I may say, a patented article, where the absolute right to control that article does not go with the purchase of it.

Mr. CHANEY. But you do transfer it, to a limited extent?

Mr. TINDALE. Yes.

Mr. GOLDFOGLE. You do not merely give a license, but you part with your title. You sell it, and you receive the money for it.

Mr. TINDALE. We do part with the title to the physical copies which you handle, and we also throw in the right of performance to the purchaser.

Mr. GOLDFOGLE. The right of performance by anybody who purchases from you?

Mr. TINDALE. Yes, sir.

Mr. GOLDFOGLE. Suppose a library has bought a work. Should not the library be permitted to give a license to a charitable society to produce the music?

Mr. TINDALE. We do not part with that part of the title.

Mr. GOLDFOGLE. You think there should be no legislation granting title to that?

Mr. TINDALE. If you allow me to finish my remarks, you will find that I answer one or two of your questions.

Mr. GOLDFOGLE. Yes.

Mr. TINDALE. We take it that under disguise this amendment seeks to take away this control of the right of performance. It would doubtless be claimed that a person buying a copyrighted or patented article buys the implied right to dispose of such in any manner in which he may see fit.

That is your claim, that anyone can rent the article if he chooses for a consideration to others. We admit that in a case of a non-patented article or any object of a tangible nature this right to buy and to dispose of by renting or otherwise exists. But in the case of a patented article it exists only by consent of the owners of the patent, who may impose conditions upon its use or manufacture. He may permit its sale in one State or county and prohibit it in another State or county, and he controls by contract the manner and conditions of its manufacture and use.

Mr. GOLDFOGLE. And in the case of your copyright you never retain unto yourself, save through the force of the statute, the right to control its production. In other words, you took advantage of the

operation of the statute to give you the general rights of which Mr. Fromme speaks.

Mr. TINDALE. We slept on our rights?

The CHAIRMAN. That is, your right is not a contract right, but a statutory right.

Mr. GOLDFOGLE. Exactly.

Mr. TINDALE. The point I was making was in connection with a patented article, where you can impose conditions as to its sale, such as to stipulate the price at which it shall be sold; and you may say that it may be sold in one State or county and not in another.

Mr. GOLDFOGLE. You never have done that, have you, in the case of a transfer?

Mr. TINDALE. I am coming to that point.

Mr. GOLDFOGLE. But did you?

Mr. TINDALE. We have made objections to it, but I admit that we have slept on our rights.

Mr. GOLDFOGLE. Whenever you transferred, whenever you sold, whenever some one purchased, you never in express terms reserved the right unto yourself?

Mr. TINDALE. We gave it to them. It went with the books automatically.

Mr. GOLDFOGLE. You gave them the right to produce?

Mr. TINDALE. Yes, sir; we did; in accordance with the statute.

The CHAIRMAN. I think the statement is clear in the record.

Mr. GOLDFOGLE. Yes; I think it is.

Mr. TINDALE. The point I would like to make is this: As I have said, the patentee of a patented article may establish the price at which his article may be sold. He may permit the sale in one State or county and prohibit it in another; and he controls by contract the manner and conditions of its manufacture and its use. Similarly the owner of a copyright controls and should control his copyright property.

A musical copyright, however, differs somewhat from a patented article, and I must request your indulgence in a somewhat technical argument.

A musical composition is something which is intangible, the creation of a composer's brain, reduced to paper by certain symbols or characters forming what we call a book, or, technically speaking, when applied to larger works, a vocal score. Such a book, containing the symbols and characters referred to, merely represents certain musical sounds and is incomplete until those musical sounds are reproduced by a combination of human voices or voices and musical instruments. For this reason we claim that the copyright issued to the author, composer, or his assigns must and should include the right of performance; that the author's control is not limited to the physical and tangible book of symbols, but extends through the completed performance. This was plainly the intent of the statute when it was enacted, and we should consider it a reversal of the spirit and intention of the law to have any part of his copyright privileges removed.

Mr. CHANEY. In other words, the property itself does not carry with it the right to use it.

Mr. TINDALE. That is the point. You have stated it better than I can do it. That is the point. The physical book that you handle is

not all that the author passes to you. It is the product of his brain, and it is not completed until you have given a public performance of it.

Mr. GOLDFOGLE. Would not the same rule practically apply to a very fine painting? You would not shut off the right of anybody looking at it, would you, or of its being exhibited at any place?

Mr. TINDALE. No, sir; that is different.

The CHAIRMAN. Gentlemen, we are crowded for time.

Mr. TINDALE. I will take only one minute. Many of these works are costly to engrave and many hundreds of dollars are expended before the first edition can be printed. It must be freely granted that it would be of no interest for authors to write musical works, nor could publishers afford to go to the expense of publishing them, if only a few copies were to be purchased and those copies could be legally rented to others, thus taking the place of legitimate sales to which the author and publisher are entitled.

Mr. TAMS. You mention the rights of the author in a great many instances. Is it not a fact that as to a great proportion of the works you publish you own the rights—that you have bought them from the author?

Mr. TINDALE. Yes.

Mr. TAMS. You do not pay a royalty at all in that case?

Mr. TINDALE. But we have paid a big price.

Mr. TAMS. But that is the fact, is it not?

Mr. TINDALE. I will answer your question, if you will allow me to conclude what I was about to say. This is an extract from a recent circular issued by leading New York and Boston publishers.

Mr. CHANEY. It is the same circular we have here?

Mr. TINDALE. Yes, sir:

We, however, publish such works under contracts with the several authors, under which contracts the authors are entitled to certain royalties on all copies sold. In many cases these royalties represent the only reward which the author obtains for his genius and for his work. It should then require no argument to show that, aside from the publisher's rights and the legal requirements of the case, it is an injustice and a fraud upon the author to use rented copies of his work in giving a performance, thus depriving him of his royalties.

Mr. TAMS. Now, I again ask you the question if it is not the fact that you own the works?

Mr. TINDALE. In some cases we have paid large prices——

Mr. TAMS. It is a fact that you own them and do not pay royalties to the authors?

Mr. TINDALE. In some cases.

Mr. TAMS. And is it not so in most cases?

Mr. TINDALE. No, sir; I beg your pardon, it is not.

STATEMENT OF MR. GEORGE W. FURNISS, CHAIRMAN OF THE COPYRIGHT COMMITTEE OF THE MUSIC PUBLISHERS' ASSOCIATION.

Mr. FURNISS. Mr. Chairman and gentlemen of the committee, I represent the Music Publishers' Association of the United States, and am chairman of the copyright committee. Mr. Tams has called attention to the fact that he has paid 50 cents apiece for certain musical compositions which he has exhibited to you. He has some others there which he did not show you that are listed as low as 17 cents.

Mr. CHANEY. He only used that as an illustration.

Mr. FURNISS. Many of the men who are in the renting business are receiving large returns. Mr. Tams may be a benevolent man, and we have no objection to his being so; but he is benevolent for his own profit.

The difference between the dramatic and musical feature under section 4966 of the copyright law is this: The dramatic works are rarely published. The author has to receive his reward from the public performance—a certain percentage of the earnings. The author or owner of the copyright, on the other hand, has to receive his reward by the sale of copies; and we object seriously as an association to having these men renting our publications all over the country. It deprives the author of that much of his earnings, as it is only by individual sales that he receives his royalties.

Mr. GOLDFOGLE. What is the percentage that goes into the royalties made to the author?

Mr. FURNISS. The Oliver Ditson Company pay about 10 per cent, as a rule—

Mr. GOLDFOGLE. I am not speaking of the percentage; but I speak of the percentage of authors paid royalties.

Mr. FURNISS. I think it is safe to say that nine-tenths of our authors receive royalties. The J. E. Ditson Company has always held its authors with it as near as possible. It is good business to keep the author interested in the publication throughout its entire life. While, on the other hand, if he sells the composition he has no further right in it, and will continually recommend those works from which he receives a royalty. There are a great many works which Mr. Tams says he rents as to which we have no objection, because we reprint them, but we do hold the right against public performance.

Mr. GILL. Is this the character of book you refer to [indicating]?

Mr. FURNISS. Yes. It is a noncopyright work.

Mr. GILL. Have you a copyright book? Have you one there?

Mr. FURNISS. This is a copyright book [indicating].

Mr. GILL. Let me look at it.

Mr. FURNISS. The present law does not require the publishers to put any special mark on their publications. That is something that is provided for in the new copyright bill, to warn the public.

Mr. GILL. You reserve no rights there [indicating]?

Mr. FURNISS. The law does not ask us to place there any words in regard to rights reserved at all, sir.

Mr. GILL. You would recommend a change in the law to cover that?

Mr. FURNISS. We recommend that in the new bill.

Mr. GILL. That there should be a notice on the publication that the right of performance is reserved?

Mr. FURNISS. Yes.

Mr. CHANEY. Take the book you have in your hand. You say that notwithstanding the fact that you have made no reservation there, in selling that book, still whoever comes into possession of the book, by whatever means, can not perform it?

Mr. FURNISS. When it comes to the public performance we say that we hold the whole right.

Mr. BONYNGE. And under the existing law you have that right?

Mr. FURNISS. Yes.

Mr. GOLDSFOGLE. Would you have any objection to an amendment which would limit the right of production without your consent to schools, churches, and institutions giving performances for charitable purposes only? In other words, a school does not derive any benefit; a church does not derive any profit; a charitable institution does not derive any profit. Would you have any objection to such institutions having the right to produce without your consent?

Mr. FURNISS. The only objection we have is this: We have done this and have done it many times. If a church or a charitable institution is so poor as to be unable to buy the books, if they will only ask the Oliver Ditson Company we will give them or loan them the books ourselves.

The CHAIRMAN. What is your objection, Mr. Furniss? I understood last night that some kind of a compromise had been reached. What is your objection to an amendment to the law such as I suggested a few moments ago, so as to exempt public schools, church choirs, and vocal societies giving public performances for charitable purposes and not for profit?

Mr. FURNISS. How are you going to tell that, if it becomes a law?

The CHAIRMAN. How do we determine all sorts of facts? It could be done.

Mr. FURNISS. You would have to investigate every case, and it would cost a great deal of money.

The CHAIRMAN. All the committee cares to know is whether you object or not?

Mr. FURNISS. We object, because we do not believe these gentlemen are honest in it. We believe they have something up their sleeves.

Mr. CHANEY. Assume that they are honest. Then what?

The CHAIRMAN. Assume that they are honest, and that this will be fairly administered. What is your objection to it?

Mr. FURNISS. If the author has no objection, we have none; but the author must be considered, because there is where his earnings come from. The publisher is only a part of the proposition.

The CHAIRMAN. You say you give away books?

Mr. FURNISS. We do.

The CHAIRMAN. Do you consult the author?

Mr. FURNISS. He gets the royalty.

The CHAIRMAN. You pay him the royalty and give the books away?

Mr. FURNISS. Yes. If we give 50 or 100 books to an association, we have to pay the author for all the copies disposed of. We are giving music away all the time, and on sheet music we pay the author $7\frac{1}{2}$ cents apiece.

Mr. TAMS. Is it not a fact that in his contract the author donates a certain number of copies for such purposes?

Mr. FURNISS. In his contract on what?

Mr. TAMS. On the sale.

Mr. FURNISS. I do not think to-day any author of prominence would do it.

Mr. TAMS. Is it not a rule of the trade that the author allows a certain number of copies free?

Mr. FURNISS. In the old day it was a rule. We had 300 copies sometimes; but that is not the rule to-day. It was the rule at one

time. There is a book [indicating] on which the market price is 50 cents. It is sold to the trade for 17 cents, and the societies are given a discount; so that your 50 cents does not represent \$50 on a membership of 100.

Mr. TAMS. This was a piece that cost the specific price I mentioned.

Mr. FURNISS. You were quoting the retail price?

Mr. TAMS. I beg your pardon. The retail price of that is 75 cents.

Mr. FURNISS. You never paid more than 25 cents for it.

Mr. TAMS. Excuse me. I have paid 40 cents for that.

Mr. FURNISS. Yes; years ago.

Mr. TAMS. No; now. That is what I paid for that.

Mr. FURNISS. The society does not pay that for it.

Mr. TAMS. Yes; but they charge me almost double what they do the society.

Mr. SULZER. They think you are a charitable institution.

Mr. TAMS. I am, in this particular.

Mr. FURNISS. We have all of us contributed to charity. I have heard of an old negro lady down south who sold pies at 10 cents apiece that cost her 11 cents apiece to make. She became very wealthy and did a large business.

Mr. BONYNGE. Is that the principle on which both sides here conduct business?

Mr. FURNISS. There is another thing I would like to mention. This gentleman has brought suit against the music publishers who sent out this circular warning societies with reference to the sale of those books. He has brought suit for \$250,000. The circular has not been out more than six weeks. There is a case of charity for you. I presume he would be willing to compromise with us to-day for \$125,000. If he claims he is doing business for nothing as a self-appointed committee on charity in this country and yet says he has lost \$250,000 in the last sixty days, I say it is a rotten kind of charity.

Mr. CHANEY. That is not always an indication of the amount actually lost in a lawsuit. Sometimes the lawyer puts in enough so that he can drop a notch or two.

Mr. FURNISS. I imagine that he might have enough to give us a discount. It is wrong to remodel that law. The present law is enough of a crazy quilt to paralyze most anybody.

The CHAIRMAN. There is great force in your suggestion, but the revision of the copyright law is going right on. You are revising the laws in the new bill you propose to introduce and are extending the copyright of musical authors and publishers.

Mr. FURNISS. Yes, sir; it does do that.

The CHAIRMAN. You are asking much more than you have now.

Mr. FURNISS. We are asking for just what other nations have. In a nation like Russia, which you all think a despotic government, the copyright runs for the term of the author's life and fifty years after his death. France does the same thing. Why should not the United States do it?

Mr. SULZER. Do you know the reason they allow it to run fifty years after his death?

Mr. FURNISS. I beg your pardon.

Mr. SULZER. It is because they do not let them live very long.
[Laughter.]

Mr. BONYNGE. This amendment here was passed in 1897, was it not, under which you reserve the rights of performance?

Mr. FURNISS. Yes, sir.

Mr. BONYNGE. Prior to 1897 how did you get along?

Mr. FURNISS. We paid no attention to it at all.

Mr. BONYNGE. Prior to that time, when any book was sold the right of performance went with the book?

Mr. FURNISS. It was at that time that these difficulties began to appear.

Mr. BONYNGE. So that from the beginning of the Government down to 1897 you got along all right?

Mr. FURNISS. Yes; but when people like Mr. Tams come into the market and are making large sums of money—he would lead you to believe that he is poor, but he is not; he has made a good living from this—when those men begin to come in as another class of barnacles or pirates in the business we want to get at them.

Mr. FROMME. Do you call Mr. Tams a pirate?

The CHAIRMAN. No matter, gentlemen; the record will show what he has said. Go on.

Mr. FURNISS. When we have a law which says that the right of public performance comes from the owner of the copyright or the publisher, and another man says that he does not recognize the law, what do you think of it?

Mr. FROMME. Who said so?

Mr. FURNISS. This gentleman said so. He said he knew the law.

Mr. FROMME. I advised him.

Mr. FURNISS. He knew it before you advised him. He is not a stupid man.

The CHAIRMAN. Gentlemen, we are not making any progress, as far as benefit to the committee is concerned.

STATEMENT OF A. R. SERVEN, REPRESENTING THE MUSIC PUBLISHERS' ASSOCIATION.

The CHAIRMAN. Who do you represent, Mr. Serven?

Mr. SERVEN. I am attorney for the Music Publishers' Association. This matter resolves itself simply to the question of property, I think. We have discussed a good many other features of it, but the question comes to this: Did or did not the founders of this Government make a mistake when they provided for certain rights in the fruits of the genius and ability of inventors and composers?

The CHAIRMAN. It evidently took them over one hundred years to find out that they had made a mistake in this instance.

Mr. SERVEN. I would like to qualify that to this extent, that it was pretty nearly one hundred years before this class of business came to develop in this country. Their theory was that because the law did not specifically protect a man by a penalty in his property therefore they were perfectly free to take it, although if the court decided that if they stole some other kind of property they would go to prison for it they would not take it. That was the reason for the act. Objection was raised to the methods of these men, the matter was presented to Congress, and it provided something to cover the matter.

In a musical publication of this character—something of an extended character—the only possible source of profit to the owner of the copyright, who in the first instance is the author or the composer, and in the second instance is the financial backer, whether he be a publisher or anybody else, the only chance he has to get remuneration for the fruit of his genius and ability in musical publications is from the sale of copies of his work, either directly or indirectly.

In the case of the dramatic production they do not publish. They simply furnish it to whom they please, according to contract, and compensation is based on the revenue from the public performance.

The CHAIRMAN. Will you tell the committee why there should be any difference between a dramatic and a musical composition?

Mr. SERVEN. As a matter of fact there is very slight difference when it comes to the question of a musical composition which is to be performed—

The CHAIRMAN. Then, if these gentlemen desire to preserve the exclusive right of performance, why do they not manage the business as the dramatic authors do?

Mr. SERVEN. Because Congress it its wisdom provided that it was not necessary to do it in that way.

The CHAIRMAN. I am not asking you for the wisdom of Congress, but for your idea about it.

Mr. SERVEN. I might say this: That to-day the United States is the only great nation that stands anywhere near the top of the list in intelligence and civilization and the arts that has not as yet produced a prominent composer. Why is that? It is for the simple reason that while we have been doing all these other things, until recently Congress did not see fit to take action, and, so far as I know, it was a year or two after it was first broached to Congress before it passed that act. There was no such incentive to the producer of highly meritorious music as would encourage the best talent we had in the United States to devote their lives to that profession for the purpose of making their daily bread and clothes for their families.

Mr. BONYNGE. If that section were repealed altogether, should the musical composer desire to retain to himself the right of performance he could protect himself, could he not, in the same way the dramatic author protects himself?

Mr. SERVEN. Probably he could, by not publishing the work at all.

Mr. BONYNGE. Yes; if he wanted to reserve the right of performance, he could do it.

Mr. SERVEN. If that were done, of course it would prevent the possibility of you or I or any other lover of music obtaining a copy of that production. We might go to the theater and see and hear it performed, but we could not take it to our homes and sit down at the piano and play a part of it. Apparently the sentiment of the country has been that it is for the elevation of the people to have music in their homes, and those interested in the production of music, both consumer and producer, have apparently unanimously agreed that the best thing for all concerned is to have these musical works published, so that the individual can get access to them.

Mr. GOLDFOGLE. You have spoken of the fact that the encouragement of the United States ought to be held out to authors. Do you

think the development of the author would be retarded if Congress gave permission to charitable institutions, churches, and schools to produce music without profit to themselves without the consent of the publishers?

Mr. SERVEN. I think, sir, that enforced charity, whether by statute or by violence, is vicious and ought never to be resorted to.

The CHAIRMAN. This is, by the way, direct charity, because Congress acted on it in 1897, and your rights are purely statutory.

Mr. SERVEN. Probably that is so. As suggested by Mr. Bonyng, it is not at all necessary for us to have that protection in order to prevent the man who wants to deprive the producer of his compensation. It is not necessary to have a statute. We can prevent him, but while we are doing that we do more harm by preventing everybody else from getting it, and it is a thing in which the greatest good to the greatest number should be considered. As to the question of charity, you gentlemen who have personal knowledge of musicians will agree with me that as a class there are no men more charitably disposed or more willing to divide their last dollar with others than members of the musical profession.

Mr. GOLDFOGLE. What is your objection, then?

Mr. SERVEN. Because it does not give him the fruit of his genius. Because he has been given that ability is he to be singled out, and are you to say, "Because you have that ability you must divide up with the rest of us?" We believe that is pretty near the same thing as saying to a man who has the ability to make \$1,000,000, while the man next to him has the ability to make only \$1,000, "You must divide up your money with the other man." The composer should not be singled out in this way.

I happen to be connected with a body that has control of a church choir. I want to say that although I do not think there has been a single Sunday when we have not had special music, yet as chairman of the board of trustees, when we came to audit the expenses of the year, I was very much gratified to find that during the past calendar year the music, for which we paid the bills, and paid what the publisher charged us, amounted to less than \$30. I was very much surprised. That is an instance of voluntary liberality. There was no special reason why it should be done for us, but they did it.

I say that this is an obnoxious principle for this committee to recognize, and that Congress should not pass it. It is an obnoxious principle in government, and it can not but lead to the most disastrous results ultimately, if we say that any particular man, or any particular class of men shall not receive the fruits of their genius and ability, but force them to divide their profits with other men.

The CHAIRMAN. Is it obnoxious legislation to repeal a statute that was passed nine years ago and put the whole thing back where it was for one hundred years?

Mr. SERVEN. If it is repealed for that purpose, to my mind it is, because if the same condition that prevails to-day had prevailed during the period when there was no statute, I say Congress would have taken care of the matter; but the conditions did not prevail. It has only been an outgrowth of recent years. When the abuse became so great that it was called to the attention of Congress, they immediately took steps to remedy it. It is the same thing as any breaking of the law. It is the same as if a man walked up in the street and

stole my horse that I have title to and proprietorship in, and he should be punished for it.

Mr. CHANEY. That is not precisely a correct illustration. In this case somebody has bought your horse and the other party comes to him and gets that horse.

Mr. SERVEN. Suppose I go to a livery stable and hire a horse. I pay for the use of the horse, and that is all. The publisher sells whatever is wanted. Unless he makes a contract to do otherwise the copyright is not sold in its entirety. This man may come and buy all he wants to. If he wishes to he can buy a half of the copyright—that is, the part of the copyright which relates to public performances. The other part relates to reproducing. Those are the two parts of a copyright. That is the right that is given to the proprietor of the copyright: First, the right to control and dispose of the reproduction of his original work; and, second, the right to say who shall perform it. That is the only chance he has of getting any revenue.

Mr. CHANEY. In other words, you make a distinction between the thing itself and the use of the thing?

Mr. SERVEN. Yes, sir; just as a patent does.

Mr. CHANEY. Does a patent do that?

Mr. SERVEN. It does do it. I will say right here that the right of performance of a musical composition is the same as the right to manufacture under a patent. It is exactly and identically the same thing. Would you say, for example, that because a man purchases a thing that is patented, that by reason of that fact he shall have all the rights to the patent?

Mr. CHANEY. He would have the right, it seems to me, to do whatever he pleased with the thing he purchased.

Mr. SERVEN. He does, except that he does not have the right to take it and manufacture copies. He does not have the right of reproduction.

Mr. CHANEY. He does not have a manufacturing right.

Mr. GOLDFOGLE. We do not claim to have a right to reprint it.

Mr. SERVEN. There are two sides to the copyright question, just as there are to the patent question. They say one side is all right, but they do not want it, and the other side is no good, but they have a right to it.

When we come to the last analysis it is the same question as the rights under a patent; and what is called manufacturing in this case, I suppose, is the process of production of this particular work.

I want to call the committee's attention to the different classes interested in the production of this article. First comes the composer, who produces the original copy, the product of his brain; second, the engraver, who engraves the plate from which the music is printed; third, the printer; fourth, the bookbinder; fifth, the advertising medium through which it is made known that there is such a thing in existence and to create a demand for it. In addition to the advertisers come the local dealers all over the country, the retailers of music. Under the renting system each loses a portion of his business. And last of all comes the publisher. There are seven distinct classes of industry in the country to-day that are being hurt by this particular manner of doing business which we complain of.

Mr. CHANEY. These other classes of people would not get as much out of the business—

Mr. SERVEN. Each one of the seven classes loses part of what it should have, as it stands to-day. The best estimate we have been able to get from these gentlemen who have these things to sell, and who do sell them, is this: That by reason of this very proposition of loaning or renting for public performance by somebody else than the owner or proprietor of the copyright, it results to-day in a loss of from 75 to 80 per cent of the profits on these musical works.

The CHAIRMAN. Do you think it amounts to 75 or 80 per cent?

Mr. SERVEN. That is the estimate of experienced men, who have these books to sell, and who have their books taken up in this way. The sales have fallen off so that at present they estimate that four-fifths of the remuneration to the composer, and to all the parties in interest under this copyright, is taken away by reason of this thing.

The CHAIRMAN. That is an extraordinary statement.

Mr. SERVEN. I think it can be verified.

The CHAIRMAN. I should think it would need verification. You are not speaking from personal experience?

Mr. SERVEN. No; but we asked these gentlemen in the business to make the most careful estimate they could.

Mr. CHANEY. In connection with all that, if this were to be limited to charitable purposes and all that sort of thing, in what respect would you lose a cent?

Mr. SERVEN. In this way: If you enact this proposed bill, you say that every copy may be put in the consumer's hands by some one else than the man who has been granted the right to control the fruit of his genius. On every single copy disposed of in that way he loses the profit.

The CHAIRMAN. Suppose it is confined as we propose to confine it; how much do you suppose you would lose by that amendment? Unless these schools or churches could borrow or rent this music, how many do you suppose would buy at all?

Mr. SERVEN. According to the illustration I have given you, it is stated by these men that they lose from 75 to 80 per cent of their legitimate profits. If you loosen that up I can not say how much further that 75 or 80 per cent will go.

The CHAIRMAN. I should think it might run up to 125 per cent. [Laughter.]

Mr. BONYNGE. Suppose a lecturer has had a lecture copyrighted, and publishes it under copyright, and I buy a copy of the lecture; is there anything to prevent my using that lecture on some occasion and charging admission, if I wish to?

Mr. SERVEN. If he sells that lecture to you, with the law in such a condition that you have under the law a perfect right to deliver the lecture or do what you want to with it anywhere and at any time, he could not touch you for it.

Mr. BONYNGE. Is there anything in the law now that would prevent me from doing it?

Mr. SERVEN. I am not sure about the lecture side of it. I have not been particularly interested in that, and have not looked it up very carefully, but, as I understand it, there are some provisions which protect the proprietor of a lecture. Of course, if he publishes it in a book for general sale, and you choose to pick up the book and read the lecture out of it, as I understand at present, he has no way of preventing that. But the ordinary way in which he uses it—

The CHAIRMAN. He uses it as the dramatic author uses his work.

Mr. SERVEN. Usually; but as soon as he takes it from that class and puts it in the other class, just so soon, as I understand, he gives by that act voluntarily the right to the public at large to use the lecture as it pleases.

The CHAIRMAN. Is not that exactly what the music composer does when he composes something and sells it?

Mr. SERVEN. I do not think so, because of our copyright law, which comes to us from other nations. We did not originate it, and I want to say that we are the last one of the great nations to give ample protection to brain production.

The CHAIRMAN. I had an impression that we led the world in Patent Office matters.

Mr. SERVEN. That is true, Mr. Chairman, of patents; but not of copyrights.

The CHAIRMAN. I regret to say, gentlemen, that we must adjourn now.

Mr. TAMS. Before you adjourn, I would like to say a word. It has been stated this morning that these people have sustained a loss of profits of from 75 to 80 per cent.

Mr. SERVEN. So I am advised.

Mr. TAMS. Here is a very popular work—Shelley's Life and Death. My library owns about 100 copies. That has been out twice, which makes 200 copies; and that will apply to almost all of the works. If the statement that has been made is a fact, the publisher only printed 225 copies of the work, whereas, in fact, they printed it by the tens of thousands.

Mr. SERVEN. And they probably spent \$20,000 or \$30,000 in getting it out.

The committee (at 12.15 o'clock p. m.) adjourned until May 3, 1906, at 11 o'clock a. m.

